

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**THE PUBLIC INTEREST LEGAL  
FOUNDATION,**

**Plaintiff,**

**v.**

**ROBERT TORRES, in his official  
Capacity as Acting Secretary of the  
Commonwealth of Pennsylvania, and  
JONATHAN M. MARKS, in his official  
Capacity as the Commissioner of the  
Bureau of Commissions, Elections and  
Legislation,**

**Defendants.**

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**NO. 1:18-CV-00463**

**CHIEF JUDGE CONNER**

**ELECTRONICALLY FILED**

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**DEFENDANTS' UNOPPOSED MOTION FOR LEAVE TO FILE  
SUR SUR REPLY TO ADDRESS NEW ARGUMENTS  
ADVANCED BY PLAINTIFF IN SUR REPLY BRIEF**

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Pursuant to Local Rule 7.7, Defendants Acting Secretary of the Commonwealth of Pennsylvania Robert Torres and Commissioner of the Bureau of Commissions, Elections and Legislation Jonathan M. Marks, by and through their undersigned counsel, seek leave to file a brief sur sur reply to address new arguments advanced by Plaintiff The Public Interest Legal Foundation ("PILF") in

its Sur Reply Brief (ECF No. 20) in the above-captioned matter and, in support thereof, state as follows:

1. PILF commenced this action against Acting Secretary Torres and Commissioner Marks on February 16, 2018 seeking access to an ongoing, privileged analysis of an electronic system error relating to Motor Voter registration.

2. On March 21, 2018, Acting Secretary Torres and Commissioner Marks filed a motion to dismiss PILF's Complaint pursuant to Rule 12(b) arguing, *inter alia*, that the National Voter Registration Act ("NVRA"), 52 U.S.C. § 20507(i), does not require or permit access to the requested records. (ECF No. 10.) They filed their supporting brief on April 4, 2018. (ECF No. 12.)

3. PILF filed its opposition brief on April 18, 2018. (ECF No. 14.)

4. Acting Secretary Torres and Commissioner Marks filed their reply brief in further support of their motion to dismiss on May 2, 2018. (ECF No. 17.)

5. PILF thereafter sought leave to file a "sur reply brief" to address the letter sent by the Department of State on April 27, 2018 to persons who may have inadvertently registered to vote through the Motor Voter system. (ECF No. 18.)

6. By Order dated May 14, 2018 (ECF No. 19), the Court granted PILF's motion for leave to file an additional brief addressing the April 27, 2018 letter. PILF filed its additional brief on May 14, 2018. (ECF No. 20.)

7. Acting Secretary Torres and Commissioner Marks hereby seek leave pursuant to Local Rule 7.7 to file a brief, three-page sur sur reply to address the arguments advanced by PILF in its sur reply brief. The proposed sur sur reply which is attached hereto as Exhibit "A" will not unduly delay the disposition of this matter but rather will assist the Court in deciding Defendants' Motion To Dismiss.

8. PILF indicated that it concurs in this request for leave to file a sur sur reply brief. (*See* PILF's Motion for Leave To File Sur Reply (ECF No. 18) at 1-2.)

WHEREFORE, Acting Secretary Torres and Commissioner Marks hereby seek leave pursuant to Local Rule 7.7 to file a brief, three-page sur sur reply to address the arguments advanced by PILF in its sur reply brief.

Respectfully submitted,

/s/ Daniel T. Brier

Daniel T. Brier

Donna A. Walsh

Counsel for Defendants,  
Acting Secretary Robert Torres and  
Commissioner Jonathan M. Marks

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(570) 342-6100

Dated: May 21, 2018

## **CERTIFICATE OF CONCURRENCE**

I, Daniel T. Brier, hereby certify that I sought the concurrence of counsel for Plaintiff The Public Interest Legal Foundation (“PILF”) in this Motion. As noted in PILF’s Motion for Leave To File Sur Reply (ECF No. 18), PILF concurs in this Motion.

/s/ Daniel T. Brier

Date: May 21, 2018

**CERTIFICATE OF SERVICE**

I, Daniel T. Brier, hereby certify that a true and correct copy of the foregoing Motion for Leave to File Sur Sur Reply was served upon the following counsel of record via the Court's ECF system on this 21st day of May, 2018:

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/s/ Daniel T. Brier